

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53624 / April 10, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12257

In the Matter of

**Metropolitan Life
Insurance Company,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND
IMPOSING REMEDIAL
SANCTIONS AND A CEASE-
AND-DESIST ORDER
PURSUANT TO SECTIONS 15(b)
AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Metropolitan Life Insurance Company ("MetLife" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:¹

¹ The findings herein are made pursuant to MetLife's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

1. MetLife, a New York life insurance corporation with its principal place of business in New York, New York, has been registered with the Commission as a broker-dealer since 1969 and as an investment adviser since 1977.

Relevant Entity

2. The Fulton County Sheriff's Office ("FCSO"), headquartered in Atlanta, Georgia, is the largest sheriff's office in the state of Georgia, with approximately 1,000 employees and an annual budget in excess of \$80 million.

Summary

3. From February 2003 through January 2004, while employed by and associated with MetLife in south Florida, a registered representative of MetLife (the "Registered Representative") made misrepresentations of material fact to the FCSO and defrauded the FCSO with respect to the investment of approximately \$7.2 million in securities. MetLife failed reasonably to supervise the Registered Representative with a view to detecting and/or preventing these fraudulent actions. MetLife also failed to keep certain customer records required by Section 17(a)(1) of the Exchange Act and Rule 17a-4 thereunder.

The Registered Representative Made False Statements to Defraud the FCSO

4. In March 2003, upon the recommendation of the Registered Representative, the FCSO invested \$2,036,134 with an entity other than MetLife in what it was led to believe was a federal bond fund (the "non-MetLife Investment"). The funds that the FCSO invested were derived from tax sale proceeds held in trust for the benefit of the owners of certain real property located within Fulton County, Georgia. MetLife received no proceeds from the non-MetLife Investment and was unaware of the existence of the non-MetLife Investment.

5. In connection with the non-MetLife Investment, the Registered Representative made false statements to the FCSO, including that the entity receiving the proceeds of the non-MetLife Investment was an affiliated company of MetLife. In furtherance of such false statements, the Registered Representative caused to be sent to the FCSO: (a) a forged list of MetLife affiliated companies, sent on MetLife letterhead from the facsimile machine of the Registered Representative's former MetLife office, which falsely included the entity receiving the proceeds of the non-MetLife Investment; and (b) quarterly account statements which falsely represented that the proceeds of the non-MetLife Investment were invested in a federal bond fund. MetLife has no records of the correspondence sent from its office relating to the non-MetLife Investment.

6. Contrary to both the Registered Representative's statements regarding the non-MetLife Investment and the representations within the quarterly account statements, the majority of the proceeds from the non-MetLife Investment were used as loans for start-up or otherwise speculative

business ventures. The remainder of the proceeds from the non-MetLife Investment was directed primarily to the Registered Representative.

7. In April 2003, upon the recommendation of the Registered Representative, the FCSO invested \$5,191,000 of public funds in a MetLife variable annuity (the "MetLife Variable Annuity"). In purchasing the MetLife Variable Annuity, the FCSO completed and returned to the Registered Representative multiple forms relating to asset allocation and suitability. In connection with the sale of the MetLife Variable Annuity, the Registered Representative made false statements to the FCSO, including statements that the MetLife Variable Annuity was a permissible investment for the FCSO under Georgia state law.

8. In March 2004, the FCSO became further aware of many of the actual details concerning the non-MetLife Investment and the MetLife Variable Annuity and requested a return of all investments from the appropriate entities.

9. In March 2004, MetLife initially returned \$4,981,201 to the FCSO, an amount equal to the surrender value of the MetLife Variable Annuity less early withdrawal charges and fees. In April 2004, MetLife returned to the FCSO an additional \$363,370, representing all withdrawal charges and fees related to the MetLife Variable Annuity, plus all accrued interest. MetLife does not have any copies of the suitability and asset allocation forms the FCSO completed and is unable to locate the FCSO customer file.

10. Neither the Registered Representative nor the entities receiving the \$2,036,134 have returned any of these proceeds to the FCSO. Although MetLife had previously returned \$5,344,571 to the FCSO relating to the MetLife Variable Annuity, in September 2005, MetLife agreed to and thereafter paid to the FCSO an additional \$1,500,000 related to the non-MetLife Investment.

11. The Registered Representative's activities discussed above, including, but not limited to, recommending unsuitable securities and making material misrepresentations of fact to the FCSO in the offer or sale of securities and in connection with the purchase or sale of securities violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**MetLife was on Notice of Compliance Concerns
From When It First Hired the Registered Representative**

12. MetLife hired the Registered Representative in February 2000. During the Registered Representative's application and licensing review, MetLife personnel noted several issues. Specifically, they discovered that the Registered Representative had misrepresented his education on his employment application and that one of the Registered Representative's previous employers was investigating him for the misappropriation of customer funds. The Registered Representative failed to disclose this information in the initial application process. The previous employer ultimately cleared the Registered Representative of any misappropriation but cited the Registered Representative for violations of customer file and fund submission policies. After the previous

employer cleared the Registered Representative of misappropriation, MetLife completed its review and formally hired the Registered Representative.

13. Despite these initial compliance concerns MetLife established no heightened supervisory procedures for the Registered Representative.

**Even with Increasing Compliance Concerns, MetLife Permitted
the Registered Representative to Work Offsite with No Heightened Supervision**

14. In 2001, additional compliance concerns arose regarding the Registered Representative. Specifically, MetLife's Corporate Ethics and Compliance department ("MetLife Compliance") investigated and learned that the Registered Representative while employed at MetLife had "bounced" more than \$100,000 in personal checks. Also, MetLife's annuity department began questioning the suitability of the Registered Representative's sales.

15. During this time, MetLife granted the Registered Representative permission to operate as a MetLife registered representative from a "detached location." This meant that the Registered Representative's supervising manager was located at a "main agency location" separate and apart from the physical location where the Registered Representative typically conducted business. While at his detached location, the Registered Representative was still required to attend periodic meetings with management, and management was required to periodically visit the Registered Representative's detached MetLife office and conduct unannounced audits.

16. Despite these further compliance concerns and the grant of permission for the Registered Representative to work offsite at a detached location, MetLife established no heightened supervisory procedures for the Registered Representative.

17. In August 2001, after the Registered Representative had begun to operate out of his detached office, MetLife Compliance presented these more recent compliance concerns, along with the prior concerns uncovered during the Registered Representative's employment processing, for review to a local manager for the Registered Representative. The local manager concluded that the Registered Representative had not been trained properly in MetLife policies and procedures and that the Registered Representative should have been monitored closely by his assigned supervising manager from the date of his hire. The local manager raised an additional concern regarding the Registered Representative working at a detached office and made two heightened supervisory recommendations: (1) that the Registered Representative's customer files be reviewed one day per week by staff from his assigned main agency location; and (2) that management from his assigned main agency location visit the Registered Representative's detached MetLife office unannounced once a month to review his overall conduct. Despite the explicit recommendation of the local manager consulted, the heightened supervisory procedures were not implemented.

**The Registered Representative Continually
Violated MetLife's Policies and Procedures**

18. MetLife conducts periodic unannounced compliance audits of main agency and detached office locations. In January 2002, MetLife conducted a periodic unannounced audit of the Registered Representative's detached MetLife office, as well as his assigned main agency location.

19. The January 2002 audit report revealed that, contrary to MetLife policies: (1) outgoing mail was sent sealed by the Registered Representative and was not reviewed prior to mailing; (2) no correspondence review files existed at the Registered Representative's detached MetLife office; and (3) the Registered Representative's supervising manager was not reviewing his customer files on a timely basis.

20. In January 2003, MetLife conducted a periodic unannounced audit of the Registered Representative's detached MetLife office, as well as his assigned main agency location. The January 2003 audit report again cited violations of MetLife correspondence review and customer file maintenance policies, indicating that these were repeat violations from January 2002 that had not been sufficiently addressed.

**MetLife Failed to Adequately Investigate Potential
Unlawful Conduct by the Registered Representative**

21. In early 2002, MetLife re-assigned supervisory responsibility for the Registered Representative to a new supervising manager. From the beginning of this new supervising manager's oversight of the Registered Representative, he noted that the Registered Representative failed to attend required supervisory meetings and had difficulty adhering to MetLife sales practice policies. In June 2002, the supervising manager formally requested that he no longer be responsible for supervising the Registered Representative. MetLife then transferred primary securities supervisory responsibility for the Registered Representative to another supervising manager in July 2002. This new supervising manager immediately became concerned with the flow of funds between the Registered Representative and his customers, and in July 2002 formally requested that MetLife initiate an investigation of the Registered Representative for potential money laundering or related activities.

22. Although the Registered Representative's supervising manager requested an investigation of the Registered Representative in July 2002, the investigation did not effectively begin until January 2003. Between the request of the Registered Representative's supervising manager for an investigation of the Registered Representative and the effective start of the investigation MetLife did not establish any heightened supervisory procedures for the Registered Representative.

23. MetLife had in place no policies or procedures regarding the timeliness of such investigations or specifying the manner in which an investigation of a registered representative suspected of potential compliance or sales practice violations, or potential unlawful actions, was to be conducted. At no point in time did the MetLife employees investigating the Registered Representative review his MetLife personnel or compliance files or his publicly available National Association of Securities Dealers, Inc. ("NASD") disclosure file. In failing to review any of these

files, or take any steps related to investigating any prior misconduct or compliance concerns, the MetLife employees conducting the investigation failed to learn of any of the Registered Representative's prior compliance violations and concern over his sales practices.

24. The MetLife employees conducting the investigation of the Registered Representative did learn in January 2003 of a previously unknown lawsuit naming the Registered Representative as a defendant. The lawsuit concerned the Registered Representative's referral, while he was previously employed at another broker-dealer, of a customer to the broker-dealer which he partially owned. The MetLife investigators first accepted the Registered Representative's statements that the lawsuit had been dismissed. In February 2003, the MetLife investigators learned that the lawsuit had not been dismissed but rather only stayed pending arbitration, that the Registered Representative had misrepresented the lawsuit's status, and that the lawsuit in fact contained allegations of fraud relating to the sale of securities. No follow up action was ever taken against the Registered Representative for misrepresenting the lawsuit's status to the investigators. Moreover, at no point in time did the MetLife employees conducting the investigation, or any other MetLife employees, take any action beyond questioning the Registered Representative to investigate the allegations of fraud within the lawsuit.

25. The lawsuit concerned a pattern of conduct very similar to that involving the FCSO, as it alleged that the Registered Representative had misrepresented the identity of the broker-dealer a customer would be doing business with and then, at the last minute, diverted the customer's funds to another source for his personal benefit. Had MetLife reasonably investigated and responded to the allegations of compliance violations against the Registered Representative through heightened supervision or implemented procedures to review adequately his customer files and correspondence through March 2003, it is likely that the firm could have prevented and/or detected the Registered Representative's fraud of the FCSO.

The Registered Representative's Antifraud Violations

26. The Registered Representative violated the antifraud provisions of the federal securities laws in connection with the FCSO's purchase of the MetLife Variable Annuity and the non-MetLife Investment. Specifically, the Registered Representative intentionally misrepresented that the MetLife Variable Annuity was a permissible investment under Georgia state law and directed his assistant to forge a list of MetLife affiliated companies that falsely identified the entity receiving the proceeds of the non-MetLife investment as an affiliated company of MetLife. He also caused bogus account statements related to the non-MetLife investment to be sent to the FCSO, falsely identifying that the investment was in a federal bond fund. These misrepresentations are material in that there is a substantial likelihood a reasonable investor would consider an investment's potential violation of state law, the true identity of the entity receiving the investment, and the nature of the investment product being purchased to be important factors in making an investment decision. TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); accord Basic, Inc. v. Levinson, 485 U.S. 224, 232 (1988). Such materially false statements made: (a) in connection with the purchase or sale of securities constitute violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and (b) in the offer or sale of securities constitute violations of Section 17(a) of the Securities Act. See, e.g., S.E.C. v. Scherm, 854 F. Supp. 900, 906 (N.D. Ga. 1993).

MetLife's Failure to Supervise

27. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of sanctions against a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of [the federal the securities laws], another person who commits such a violation, if such other person is subject to his supervision." The Commission has repeatedly emphasized that "it is critical for investor protection that a broker establish and enforce effective procedures to supervise its employees." In the Matter of Donald T. Sheldon, 51 S.E.C. 59, 78-79 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Establishment of policies and procedures alone is not sufficient to discharge supervisory responsibility. The firm must also establish a system to implement such procedures and must have an adequate system of follow-up and review in place if red flags are detected. See, e.g., In the Matter of David Lerner Assocs., Inc., Exchange Act Release No. 49729, *2 (May 19, 2004); In the Matter of W.J. Nolan & Co., et al., Exchange Act Release No. 44833, *5 (Sep. 24, 2001).

28. MetLife failed to develop procedures or a system to implement procedures for heightened supervision of the Registered Representative in response to his compliance violations. MetLife implemented no heightened supervision of the Registered Representative despite his prior false statements and material omissions on his employment application, his bouncing more than \$100,000 in personal checks, his having the suitability of his annuity sales called into question, and recommendations for heightened supervision by supervisors. Further, MetLife had no policies or procedures in place for how to conduct a comprehensive and timely investigation of the Registered Representative once multiple red flags, including allegations of securities fraud, were detected. Had MetLife developed and implemented a system of heightened supervision for the Registered Representative or had policies or procedures in place for conducting a comprehensive investigation of the Registered Representative once multiple red flags were detected, it is likely that the firm could have detected and/or prevented the fraud perpetrated by the Registered Representative that led to the FCSO's loss. MetLife's conduct evidences a failure to reasonably supervise the Registered Representative with a view to preventing his violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

29. MetLife has now drafted and adopted certain compliance policies and procedures in response to certain of the specific failures that allowed the Registered Representative to defraud the FCSO.

30. MetLife also has independently negotiated a settlement with the FCSO to address the FCSO's losses stemming from the conduct of MetLife's Registered Representative. Pursuant to MetLife's Offer and as reflected in this Order, MetLife voluntarily repaid to the FCSO the negotiated amount of \$1,500,000.

**MetLife's Violation of Section 17(a)(1)
of the Exchange Act and Rule 17a-4 thereunder**

31. Section 17(a)(1) of the Exchange Act provides that each member of a national securities exchange, broker, or dealer "shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title."

32. Exchange Act Rule 17a-4(b)(4) provides that brokers and dealers shall preserve: "[o]riginals of all communications received and copies of all communications sent . . . by the member, broker or dealer . . . relating to its business as such."

33. By failing to retain the suitability and asset allocation forms completed by the FCSO, along with all correspondence sent to the FCSO, MetLife willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-4 thereunder.

Remedial Efforts

34. In determining to accept the Offer, the Commission has considered the remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

35. Respondent has undertaken to pay and has paid \$1,500,000 to the FCSO.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent MetLife's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Pursuant to Section 15(b)(4) of the Exchange Act, Respondent be, and hereby is, censured;

B. Pursuant to Section 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17a-4 thereunder; and

C. Respondent shall, with ten days of entry of this Order, pay a civil monetary penalty in the amount of \$250,000 to the United States Treasury. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432

General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (d) submitted under cover letter that identifies Metropolitan Life Insurance Company as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Richard P. Murphy, Assistant Director, Division of Enforcement, Atlanta District Office, 3475 Lenox Road, Suite 500, Atlanta, Georgia 30326.

By the Commission.

Nancy M. Morris
Secretary